

The Honorable Lauren King

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JASON GREGORIO, THOMAS VALENTINE,  
LEO MCGOWAN, VINCELLE CALICA,  
RAYMOND CALICA, AND TAMARA  
COWLES individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

GREEN DIAMOND RESOURCE COMPANY,  
  
Defendant.

CASE NO. 2:24-cv-00596-LK

**STIPULATED ESI AGREEMENT  
AND ~~PROPOSED~~ ORDER**

NOTE ON MOTION CALENDAR:  
January 10, 2025

The parties hereby stipulate to the following provisions regarding the discovery of electronically stored information (“ESI”) in this matter:

**A. General Principles**

1. An attorney’s zealous representation of a client is not compromised by conducting discovery in a cooperative manner. The failure of counsel or the parties to litigation to cooperate in facilitating and reasonably limiting discovery requests and responses raises litigation costs and contributes to the risk of sanctions.

2. As provided in LCR 26(f), the proportionality standard set forth in Fed. R. Civ. P. 26(b)(1) must be applied in each case when formulating a discovery plan. To further the application of the proportionality standard in discovery, requests for production of ESI and related responses should be reasonably targeted, clear, and as specific as possible.

#### **B. ESI Disclosures**

Within 30 days of entry of this Order, or at a later time if agreed to by the parties, each party shall disclose:

1. Custodians. The custodians most likely to have discoverable ESI in their possession, custody, or control. The custodians shall be identified by name, title, connection to the instant litigation, the type of the information under the custodian's control, and the likely custodial sources of the custodian's ESI (including, for example, hard drive, laptops, and mobile devices). If a requesting party determines that additional Custodians should be added, then the requesting party shall advise the producing party in writing of the proposed additional Custodians and the basis for the request.

2. Non-custodial Data Sources. A list of non-custodial data sources (*e.g.*, shared drives, servers), if any, likely to contain discoverable ESI. The producing party will identify the databases that are likely to contain discoverable "structured data."

3. Third-Party Data Sources. A list of third-party data sources, if any, likely to contain discoverable ESI (*e.g.*, third-party email providers, mobile device providers, cloud storage) and, for each such source, the extent to which a party is (or is not) able to preserve information stored in the third-party data source.

4. Inaccessible Data. A list of data sources, if any, likely to contain discoverable ESI (by type, date, custodian, electronic system or other criteria sufficient to specifically identify

1 the data source) that a party asserts is not reasonably accessible under Fed. R. Civ. P.  
2 26(b)(2)(B). The parties agree to take reasonable steps to preserve inaccessible discoverable  
3 data that is known to the preserving party and which is under the preserving party's custody or  
4 control until the parties meet and confer about whether such data shall be preserved.

5 **C. ESI Discovery Procedures**

6 1. On-site inspection of electronic media. Such an inspection shall not be required  
7  
8 absent a demonstration by the requesting party of specific need and good cause or by agreement  
9 of the parties.

10 2. Search methodology. The parties shall timely confer to attempt to reach  
11 agreement on appropriate search terms and queries, file type and date restrictions, data sources  
12 (including custodians), and other appropriate computer- or technology-aided methodologies,  
13 before any such effort is undertaken. The parties shall continue to cooperate in revising the  
14 appropriateness of the search methodology.

15 a. Prior to running searches:

16 i. The producing party shall disclose the data sources (including  
17 custodians), search terms and queries, any file type and date restrictions, and any other  
18 methodology that it proposes to use to locate ESI likely to contain responsive and discoverable  
19 information. The producing party will provide a hit count for each search term, search string,  
20 or query, and the parties will reach an agreement on the search terms, search strings, or queries  
21 to be used before the producing party produces documents hitting on those search terms, search  
22 strings, or queries.  
23  
24

25 ii. After disclosure, if the requesting party believes, in good faith,  
26 that the search terms, search strings, or queries agreed to by the parties pursuant to Section

1 C(2)(a) are insufficient, the parties shall meet and confer in order to reach an agreement on  
2 additional search terms, search strings, or queries and/or other methodology.

3                   iii.       The following provisions apply to search terms / queries of the  
4 requesting party. Focused terms and queries should be employed; broad terms or queries, such  
5 as product and company names, generally should be avoided. A conjunctive combination of  
6 multiple words or phrases (*e.g.*, “computer” and “system”) narrows the search and shall count  
7 as a single search term. A disjunctive combination of multiple words or phrases (*e.g.*,  
8 “computer” or “system”) broadens the search, and thus each word or phrase shall count as a  
9 separate search term unless they are variants of the same word. The producing party may identify  
10 each search term or query returning overbroad results demonstrating the overbroad results and  
11 a counter proposal correcting the overbroad search or query.  
12

13                   b.       Known responsive ESI: ESI that is known to a party to be responsive to  
14 a discovery request or subject to disclosure under Federal Rule of Civil Procedure 26(a)(1)(A)  
15 may not be withheld on the grounds that it was not identified as responsive by the protocol  
16 described in, or developed in accordance with, this Agreement. Discrete folders or collections  
17 of documents that are identified by a custodian as likely to be responsive will be collected and  
18 preserved pursuant to standard business practices and processes that are reasonably designed to  
19 ensure all potentially responsive documents are identified and collected.  
20

21                   3.       Format.

22                   a.       Unless otherwise specified in a particular discovery request consistent  
23 with FRCP 34(b)(2)(D), the parties agree that ESI will be produced to the requesting party with  
24 searchable text, in a format described below. If a party serves a request specifying a particular  
25  
26

1 form or forms in which electronically stored information is to be produced, this section will  
2 apply to the extent it is not inconsistent with the form specified in the request.

3           b. Each document image file shall be named with a unique number (Bates  
4 Number). Parties will take reasonable steps to ensure that file names should not be more than  
5 twenty characters long or contain spaces. When a text-searchable image file is produced, the  
6 producing party must preserve the integrity of the underlying ESI, *i.e.*, the original formatting,  
7 the metadata (as noted below) and, where applicable, the revision history.

8           c. All productions shall be encrypted. Any production made via FTP should  
9 be provided as compressed archives (ZIP or RAR files). Productions over 5GB may be produced  
10 via FTP by splitting the compressed archives into 5GB or less or on encrypted physical media,  
11 such as hard drive or flash drive.

12           d. Responsive spreadsheets (e.g., Excel files), audio files, and video files  
13 shall be produced in native format. The parties will meet and confer to discuss requests for the  
14 production of other files in native format on a case-by-case basis. All native documents will be  
15 accompanied by single-page PDF or TIFF files that are sequentially Bates numbered and include  
16 any applicable confidentiality language pursuant to any Protective Order entered in this  
17 litigation, companion searchable text files (including electronically extracted text or, if  
18 electronically extracted text is unavailable, OCR text), and companion data load files for  
19 commonly-used e-discovery software. The native file name shall include the accompanying  
20 image files' first Bates Number. To the extent that documents produced in native format cannot  
21 be rendered or viewed without the use of proprietary software, the parties shall meet and confer  
22 to minimize any expense or burden associated with the review of such documents, including  
23 issues that may arise with respect to obtaining access to any such software or operating manuals.  
24  
25  
26

1 (i) If the ESI is not amenable to being imaged, it shall be produced only in  
2 its original, native, unaltered format, along with a spacer image sheet that: (1) indicates  
3 that the file was produced as a native file; and (2) is marked with a Bates production  
4 number. That Bates production number will be the production number of the  
5 corresponding native file. The native file name shall include this Bates production  
6 number.

7  
8 (ii) If production of a particular document as a native format file would result  
9 in the disclosure of information protected by the attorney-client privilege, the work-  
10 product doctrine, or that is otherwise protected from discovery, the producing party may  
11 object to its production as a native file and produce the document at issue with redactions  
12 in sequentially Bates numbered, static image format (with companion text and load files  
13 as described above). Wherever possible, the remainder of the document should be  
14 produced in native (for example, Excel spreadsheet portions that need not be redacted).

15  
16 e. All e-mails and other documents not being produced in native format  
17 should be produced as PDF files or single-page TIFF files that are sequentially Bates numbered  
18 and include any applicable confidentiality language pursuant to any Protective Order entered in  
19 this litigation, companion searchable text files (including electronically extracted text or, if  
20 electronically extracted text is unavailable, OCR text), and companion data load files for  
21 commonly-used e-discovery software.

22  
23 f. Non-standard electronic files include, but are not limited to, source code,  
24 transactional data, database files, audio and video files, and proprietary applications not publicly  
25 available. The producing party will take reasonable steps to produce documents from such  
26 sources in a reasonably usable format with appropriate metadata in line with how the

1 information is kept in the usual course of business. If after reviewing the produced documents a  
2 receiving party raises a specific issue or concern about a produced document or data, the parties  
3 will meet and confer regarding whether an alternative form of production or additional metadata  
4 is necessary or appropriate.

5           g. Paper documents amenable to being imaged will be produced as PDF  
6 files or single-page TIFF files that are Bates numbered and include any applicable  
7 confidentiality language pursuant to any Protective Order entered in this litigation, with  
8 companion searchable text files (including electronically extracted text or, if electronically  
9 extracted text is unavailable, OCR text), and with companion data load files for commonly-used  
10 e-discovery software. In addition, paper documents that are in color should be scanned in full  
11 color and produced as full color PDFs or single-page TIFFs. Physically oversized originals,  
12 however, may be reduced provided that such reduction does not obscure any text or otherwise  
13 make the document unreadable. In addition, reducing an image may be necessary to display  
14 production numbers and confidentiality designations without obscuring the text. The parties  
15 agree not to degrade the searchability of documents as part of the document production process.  
16 If a party desires additional information about a particular paper document produced in this  
17 form, the parties will meet and confer regarding the appropriate means to supply that  
18 information. Paper documents should be logically unitized for production to the extent  
19 reasonably practicable. Where the documents were organized into groups, such as folders,  
20 clipped bundles, and binders, this structure shall be maintained and provided in the load file to  
21 the extent reasonably practicable.

22           i. The following metadata fields will be produced for each non-privileged  
23 responsive document returned as part of an ESI search to the extent that such information is  
24

1 available at the time of collection and processing. If no data exists for a particular field, the  
 2 producing party may leave the field blank.

|  |  |
|--|--|
| 3 Provided for all records:                          |  |
| 4 ProdBeg  |  |
| 5 ProdEnd  |  |
| 6 ProdBegAttach                                      |  |
| 7 ProdEndAttach                                      |  |
| 8 ParentBates  | First Bates number of parent document/Email. **This ParentBates field should be populated in each record representing an attachment "child" document.  |
| 9 ChildBates   | First Bates number of "child" attachment(s); can be more than one Bates number listed depending on the number of attachments. **The ChildBates field should be populated in each record representing a "parent" document |
| 10 Custodian   |  |
| 11 All Custodians                                    | Populated with names of all custodians for whom the document was   |
| 12 File_Extension                                    |  |
| 13 MD5Hash   |  |
| 14 FilePath  | Starting with container name (PST or NSF) through mailbox folder name.   |
| 15 Record Type                                       | Populated with Email, Attachment, or Loose File.   |
| 16 NativePath  | Relative path to native file if provided in production.  |
| 17 TextPath  | Relative path to document text/OCR file if provided in production.   |
| 18 Provided for Email:                               |  |
| 19 SentDate  | Format yyyy/mm/dd hh:mm:ss UTC   |
| 20 ReceivedDate                                      | Format yyyy/mm/dd hh:mm:ss UTC   |
| 21 From  |  |
| 22 To  |  |
| 23 CC  |  |
| 24 BCC   |  |
| 25 Subject   |  |
| 26 ThreadID  | Email thread identification value (ConversationIndex or other identifier)  |
| Attachment Names                                     | File names of attached documents   |
| Num_Attachments                                      | Number of attached documents   |
| Redaction  | Populated with "Yes" or "Has Redactions" for the documents containing redactions.  |
| Confidentiality                                      | Populated with the Confidentiality designation of the document. If a document does not have a Confidentiality designation, this field can be left blank.   |
| Provided for Edocs (including attachments to email): |  |
| Author   |  |
| CreateDate   | Format yyyy/mm/dd hh:mm:ss UTC   |
| ModDate  | Format yyyy/mm/dd hh:mm:ss UTC   |
| DocTitle   |  |
| FileName   |  |



|   |                        |  |
|---|------------------------|--|
| 1 | FileSize               |  |
| 2 | Paper Document Fields: |  |
| 3 | ProdBeg                |  |
| 4 | ProdEnd                |  |
| 5 | ProdBegAttach          |  |
| 6 | ProdEndAttach          |  |
| 7 | Custodian              |  |

4. De-duplication. The parties may de-duplicate their ESI production across custodial and non-custodial data sources after disclosure to the requesting party, and the duplicate custodian information removed during the de-duplication process tracked in a duplicate/other custodian field in the database load file.

5. Email Threading. The parties may use analytics technology to identify email threads and need only produce the unique most inclusive copy and related family members and may exclude lesser inclusive copies. Upon reasonable request, the producing party will produce a less inclusive copy.

#### **D. Preservation of ESI**

The parties acknowledge that they have a common law obligation, as expressed in Fed. R. Civ. P. 37(e), to take reasonable and proportional steps to preserve discoverable information in the party's possession, custody, or control. With respect to preservation of ESI, the parties agree as follows:

1. Absent a showing of good cause by the requesting party, the parties shall not be required to modify the procedures used by them in the ordinary course of business to back-up and archive data; provided, however, that the parties shall preserve all discoverable ESI in their possession, custody, or control.

2. The parties will supplement their disclosures in accordance with Fed. R. Civ. P. 26(e) with discoverable ESI responsive to a particular discovery request or mandatory disclosure

1 where that data is created after a disclosure or response is made (unless excluded under Sections  
2 (D)(3) or (E)(1)–(2)).

3 3. Absent a showing of good cause by the requesting party, the following  
4 categories of ESI need not be preserved:

- 5 a. Deleted, slack, fragmented, or other data only accessible by forensics.
- 6 b. Random access memory (RAM), temporary files, or other ephemeral  
7 data that are difficult to preserve without disabling the operating system.
- 8 c. On-line access data such as temporary internet files, history, cache,  
9 cookies, and the like.
- 10 d. Data in metadata fields that are frequently updated automatically, such  
11 as last-opened dates (see also Section (C)(3)(i)).
- 12 e. Back-up data that are duplicative of data that are more accessible  
13 elsewhere.
- 14 f. Server, system or network logs.
- 15 g. Data remaining from systems no longer in use that is unintelligible on the  
16 systems in use.
- 17 h. Electronic data (*e.g.*, email, calendars, contact data, and notes) sent to or  
18 from mobile devices (*e.g.*, iPhone, iPad, Android devices), provided that  
19 a copy of all such electronic data is automatically saved in real time  
20 elsewhere (such as on a server, laptop, desktop computer, or “cloud”  
21 storage).
- 22
- 23
- 24

## 25 **E. Privilege**

- 26 1. A producing party shall create a privilege log of all documents fully withheld

1 from production on the basis of a privilege or protection, unless otherwise agreed or excepted  
2 by this Agreement and Order.

3 2. The parties agree that, unless good cause exists to require a party to do so, they  
4 need not log the following:

5 (a) information or communications shared exclusively between a producing party and  
6 its outside counsel, or an agent of outside counsel, after the filing of the Complaint;

7 (b) information or communications shared with any non-testifying experts in connection  
8 with specific litigation; or  
9

10 (c) information, documents, or communications protected by Federal Rule of Civil  
11 Procedure 26(b)(4).

12 3. Privilege logs shall include a unique identification number for each document  
13 and the basis for the claim (attorney-client privileged or work-product protection). For ESI, the  
14 privilege log may be generated using available metadata, including author/recipient or  
15 to/from/cc/bcc names; the subject matter or title; and date created. Should the available metadata  
16 provide insufficient information for the purpose of evaluating the privilege claim asserted, the  
17 producing party shall include such additional information as required by the Federal Rules of  
18 Civil Procedure. A party must manually populate on its privilege log an author and date for any  
19 withheld document where that information is not provided by the objective metadata, unless  
20 such information is not reasonably discernable from the document or the information is not  
21 necessary to evaluate the claim of privilege in light of the metadata that is discernable and/or  
22 the information provided as the basis for the claim. ~~Parties will~~ Privilege logs will be produced  
23 to all other parties no later than 30 days before the deadline for filing motions related to  
24 discovery unless an earlier deadline is agreed to by the parties.  
25  
26

1           4.       Redactions need not be logged so long as the basis for the redaction is clear on  
2 the redacted document and the nature of the privilege asserted is noted on the face of the  
3 document.

4           5.       With respect to privileged or work-product information generated after the filing  
5 of the complaint, parties are not required to include any such information in privilege logs.

6           6.       Activities undertaken in compliance with the duty to preserve information are  
7 protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

8           7.       A Party may not redact information on the basis it believes such information to  
9 be irrelevant or non-responsive.

10           8.       A party that withholds any document entirely on the basis of privilege shall  
11 produce a Bates numbered placeholder page/slip sheet that contains the following language:  
12 “Document Withheld on the Basis of Privilege.” Slip sheets for withheld documents need be  
13 produced only for partially-privileged families, where the producing party asserts privilege over  
14 a portion but not all of the responsive documents in the family. Slip sheets need not be produced  
15 for fully privileged document families.

16           9.       Pursuant to Fed. R. Evid. 502(d), the production of any documents in this  
17 proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding,  
18 constitute a waiver by the producing party of any privilege applicable to those documents,  
19 including the attorney-client privilege, attorney work-product protection, or any other privilege  
20 or protection recognized by law. Information produced in discovery that is protected as  
21 privileged or work product shall be immediately returned to the producing party, and its  
22 production shall not constitute a waiver of such protection.  
23  
24  
25  
26

1 DATED this 20th day of January, 2025.

2 TOUSLEY BRAIN STEPHENS PLLC

3  
4 By: s/Kaleigh N. Boyd  
5 Kaleigh N. Boyd, WSBA #52684  
6 kboyd@tousley.com  
7 1200 Fifth Avenue, Suite 1700  
8 Seattle, Washington 98101  
9 Telephone: (206) 682-5600  
10 Facsimile: (206) 682-2992  
11 E: kboyd@tousley.com

12 Samuel J. Strauss (SBN 46971)  
13 STRAUSS BORRELLI PLLC  
14 One Magnificent Mile  
15 980 N Michigan Avenue, Suite 1610  
16 Chicago IL, 60611  
17 Telephone: (872) 263-1100  
18 Facsimile: (872) 263-1109  
19 E: sam@straussborrelli.com

20 William B. Federman (admitted *pro hac vice*)  
21 Kennedy M. Brian (admitted *pro hac vice*)  
22 FEDERMAN & SHERWOOD  
23 10205 North Pennsylvania Avenue  
24 Oklahoma City, Oklahoma 73120  
25 Telephone: (405) 235-1560  
26 Facsimile: (405) 239-2112  
E: wbf@federmanlaw.com  
E: kpb@federmanlaw.com

Mason A. Barney\*  
Tyler J. Bean\*  
SIRI & GLIMSTAD LLP  
745 Fifth Avenue, Suite 500  
New York, New York 10151  
Telephone: (212) 532-1091  
E: mbarney@sirillp.com  
E: tbean@sirillp.com

***Attorneys for Plaintiffs***

24 /s/Paul G. Karlsgodt  
25 Paul G. Karlsgodt, WSBA # 40311  
26 **BAKER & HOSTETLER LLP**  
999 Third Avenue, Suite 3900  
Seattle, WA 98104  
T: 206.332.1380

F: 206.624.7317  
E: pkarlsgodt@bakerlaw.com

Casie D. Collignon (admitted *pro hac vice*)  
**BAKER & HOSTETLER LLP**  
1801 California Street, Suite 4400  
Denver, CO 80202  
T: 303.764.4013  
F: 303.861.7805  
E: ccollignon@bakerlaw.com


Sam A. Camardo (admitted *pro hac vice*)  
Kendall Kash (admitted *pro hac vice*)  
**BAKER & HOSTETLER LLP**  
Key Tower  
127 Public Square, Suite 2000  
Cleveland, OH 44114  
T: 216.621.0200  
F: 216.696.0740  
E: scamardo@bakerlaw.com  
E: kkash@bakerlaw.com

*Attorneys for Defendant*  
*Green Diamond Resource Company*

**ORDER**

Based on the foregoing stipulation between Plaintiffs and Green Diamond, IT IS SO ORDERED.

DATED: January 21, 2025



---

The Honorable Lauren King  
UNITED STATES DISTRICT JUDGE